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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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11 UNITED STATES OF AMERICA,
12 Plaintiff,

NO. CR. 03-95-WBS

13 v.

MEMORANDUM AND ORDER RE:
MOTION TO SUPPRESS FRUITS OF
VEHICLE SEARCH

14 AMR MOHSEN and ALY MOHSEN,
15 Defendants.
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17 Defendant Amr Mohsen ("Defendant") moves to suppress
18 the evidence seized from his car on March 30, 2004.

19 I. Background
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21 The events of the underlying patent litigation that
22 resulted in perjury and obstruction of justice counts against
23 defendant are well known to the government and defendant.
24 Defendant was indicted in March 2003.

25 On March 25, 2004, the FBI placed defendant under
26 surveillance, and this surveillance did not end until
27 approximately 10:30 p.m. on March 27, 2004. (Mar. 30, 2004 Weber
28 Aff. in Supp. of Search Warrant for Def.'s Car at 2). At

1 approximately 9:00 p.m. on March 25, 2004, FBI Special Agent Joel
2 Moss saw defendant at the Egyptian Consulate in San Francisco.
3 (Id. at 4).

4 On March 26, 2004, Mohsen deposited and withdrew large
5 amounts of money from three banks. At approximately 2:30 p.m. on
6 March 26, defendant deposited two checks in the amounts of
7 \$30,000 and \$34,000 at a Bank of America branch in Santa Clara.
8 (Id. at 2). Approximately five minutes after he left the Santa
9 Clara branch of Bank of America, Mohsen arrived at the Silicon
10 Valley Bank. (Id.). There he deposited a \$30,000 cashier's
11 check and withdrew \$30,000 in cash. (Id.). Approximately two
12 hours after leaving the Silicon Valley Bank, defendant drove to a
13 Bank of America branch in Sunnyvale. (Id.). There he deposited
14 a check drawn on the State Bank of Boston in the amount of
15 \$54,500 and asked for as much cash as possible. (Id. at 2-3).
16 He withdrew \$10,000 and was told that the remainder of the
17 deposited funds would be available at midnight that night.
18 (Id.).

19 The next day, March 27, 2004, at approximately noon,
20 defendant entered a branch of Bank of America in Los Gatos and
21 was observed receiving a stack of United States currency
22 approximately 1.5 inches thick. (Id. at 3). About an hour
23 later, defendant went to a hotel in Los Gatos and used a pay
24 telephone. (Id.). FBI Special Agent Jeffrey Johnson overheard
25 defendant using the words "passport" and "flight arrangements."
26 (Id.). Defendant was also overheard by Special Agent Johnson
27 rescheduling an appointment for later that afternoon because he
28 would not be around on Monday (Id.). At about 3:30 p.m.,

1 defendant was observed at a dentist's office in Fremont. (Id.).
2 Marivic Simon, an assistant at that office, informed FBI Special
3 Agent David Carr that defendant told her that he was going to be
4 out of town for at least two months. (Id.). Ms. Simon also
5 informed Special Agent Carr that defendant used the office phone
6 to book a flight to Fort Lauderdale. (Id.). At 4:50 p.m. the
7 same day, Special Agent Moss overheard defendant on a public
8 telephone say that he was in the Bay Area and would be there for
9 a few hours. (Id.). At approximately 7:00 p.m., defendant was
10 observed by FBI Special Agent Jason Richards using a pay
11 telephone for about an hour and a half, during which time
12 defendant was overheard trying to book a charter flight from Fort
13 Lauderdale to the Cayman Islands. (Id.). Special Agent Richards
14 also overheard defendant mentioning that one person would be
15 traveling on an Egyptian passport and asking whether he could
16 avoid giving his social security number because he did not want
17 it to be on a computer data base. (Id.). Defendant was also
18 overheard successfully booking a flight to Fort Lauderdale on
19 America West, departing San Jose at 9:00 a.m. the next day, March
20 28. (Id.).

21 Defendant was arrested at approximately 10:30 p.m. on
22 March 27, 2004. (Id. at 4). Incident to arrest, FBI Special
23 Agent Bruce Whitten recovered approximately \$20,000 in \$100 bills
24 and an Egyptian passport, apparently issued by the Egyptian
25 Consulate in San Francisco on March 25, 2004, in the name of Dr.
26 Amr Mohamed Abdel-Latif Mohsen. (Id.). Contact information was
27 also founds on defendant's person for Alaf Elmazariky, Consul
28 General of Egypt, Western States, and Wael Aboulmagd, Counselor

1 for the Embassy of Egypt located in Washington, D.C. (Id.).

2 Defendant was arrested while driving his 1992 black
3 Mercedes Benz. (Def.'s Mem. in Supp. of Mot. to Suppress
4 Evidence Obtained as a Result of Search of Def.'s Vehicle at 3).
5 The arrest took place in the parking lot of an apartment complex
6 in Campbell. (Mar. 30, 2004 Weber Aff. in Supp. of Search
7 Warrant for Def.'s Car at 4). After the arrest, defendant's
8 vehicle was towed to an FBI garage facility. (Def.'s Mem. in
9 Supp. of Mot. to Suppress Evidence Obtained as a Result of Search
10 of Def.'s Vehicle at 3). On the next day, March 28, agents
11 reported taking an inventory of the vehicle's contents and
12 removing a black wallet, two checkbooks, and a laptop computer.
13 (Id. at 3-4).

14 On March 30, 2004, the court granted the government's
15 request for a search warrant. (Id. Ex. A (warrant)). Attachment
16 A to that warrant authorized seizure of the following items:

17 1. Any and all tickets, notes, papers, documents, receipts,
18 and other written items used for, relating to and/or
19 reflecting any travel arrangements from on or about January
20 1, 2004 to any date in the future, including but not limited
21 to telephone numbers, telephone calling cards, toll free
22 numbers, business cards, and domestic and foreign travel
23 reservations, for Amr Mohsen and/or any relative of Amr
24 Mohsen;

25 2. Any all United States and foreign currency, money orders,
26 tellers checks, cashiers checks, travelers checks and
27 papers, documents, notes, receipts, checks, ledgers,
28 invoices, statements, and other written items relating to
and reflecting the withdrawal, deposit, transfer, debit and
any other transactions of United States and/or foreign
currency from any and all United States and foreign
financial institutions in the name of and/or for the benefit
of Amr Mohsen and/or any relative of Amr Mohsen from on or
about January 1, 2004 to any date in the future;

3. Any and all passports, documents, notes, receipts,
checks, invoices, statements, business cards and other
written items relating to and reflecting Amr Mohsen's and/or

1 any relative of Amr Mohsen's application for and receipt of
2 an Egyptian passport between on or about April 8, 2003 and
any date in the future;

3 4. Any and all computers, computer disks, memory sticks,
4 hard drives, and other computer media capable of storing
5 information relating to any and all items reference[d] in
paragraphs 1 through 3, including a search of any electronic
media contained therein.

6 (Id. Ex. A (warrant)).

7 On March 30, 2004, the search of defendant's vehicle
8 was conducted. (Pl.'s Mem. in Opp'n to Def.'s Mot. to Suppress
9 Evidence Obtained as a Result of Search of Def.'s Vehicle Ex. 2
10 (Apr. 1, 2004 FBI post-search documents). The following items of
11 evidence were seized: (1) yellow notepad with miscellaneous white
12 paper documents; (2) e-mail printouts; (3) bank documents; (4)
13 yellow notepad; (5) miscellaneous documents. (Id.).

14 Investigators also created a forensic image of the computer found
15 in defendant's car. (Id.). "Through review of the data contained
16 on the working copy, data and/or documents deemed pertinent to
17 the investigation were identified, exported and provided to the
18 investigator in report format." (Id.).

19 II. Discussion

20 A. The Effect of the Unlawful Arrest on the Subsequent 21 Search of Defendant's Vehicle Pursuant to a Warrant

22 By another order, the court held that the warrantless
23 arrest of defendant was not made pursuant to any statutory
24 authority, and therefore that certain items found on defendant's
25 person may not be admitted into evidence. The issue addressed in
26 this memorandum is whether the items found in defendant's car
27 must also be suppressed.

28 "Under the exclusionary rule, law enforcement officers

1 may not use information obtained in violation of the exclusionary
2 rule to establish probable cause justifying a search." United
3 States v. Roberts, 747 F.2d 537, 541 (9th Cir. 1984). However,
4 so long as there are sufficient grounds to establish probable
5 cause for a subsequent search independent of any unlawfully
6 obtained evidence, and a warrant issues based on that independent
7 evidence, the independent source doctrine applies and the second
8 search does not violate the Constitution. Nix v. Williams, 467
9 U.S. 431, 443-44 (1988); see id. at 443 ("The interest of society
10 in deterring unlawful police conduct and the public interest in
11 having juries receive all probative evidence of a crime are
12 properly balanced by putting the police in the same, not a worse
13 position, tha[n] they would have been in if no police error or
14 misconduct had occurred.").

15 At the time that the affidavit for the search of
16 defendant's car was submitted to the magistrate, the officers had
17 already arrested defendant and discovered that he had an Egyptian
18 passport on his person. (Mar. 30, 2004 Weber Aff. in Supp. of
19 Search Warrant for Def.'s Car at 4). Pursuant to the order
20 addressing defendant's arrest, the passport will be suppressed.
21 However, even absent the evidence the government secured pursuant
22 to the arrest, the government had sufficient probable cause to
23 believe that defendant had applied for a passport in the past.
24 Defendant was seen at the Egyptian consulate at 9:00 p.m. on the
25 25th. (March 30, 2004 Weber Aff. in Supp. of Search Warrant for
26 Def.'s Car at 4). Defendant was overheard attempting to book a
27 charter flight out of the country. (Id. at 3). Defendant was
28 seen withdrawing tens of thousands of dollars in cash from local

1 banks. (Id. at 2-3). He told an assistant at the dentist's
2 office that he would be out of town for at least two months.
3 (Id. at 3).

4 The totality of the circumstances, even absent any
5 evidence secured through defendant's arrest, show that law
6 enforcement agents had probable cause to believe that defendant
7 had violated 18 U.S.C. § 401 by applying for a passport or by not
8 surrendering his passport, since the evidence shows that
9 defendant was making plans to travel outside the United States on
10 March 28, 2004.¹ The agents also had probable cause to believe
11 that circumstantial evidence of defendant's application for a
12 passport would be found in the car, because defendant had used
13 the car to drive to various banks and withdraw cash. (Id. at 2-
14 3) ("Mohsen drove to another Bank of America branch in
15 Sunnyvale"; "The following day, Mohsen drove to a Bank of America
16 branch"). In addition, although not explicitly stated in the
17 Weber affidavit, it is likely that Mohsen used his car to go to
18 the Egyptian consulate in San Francisco on March 25 at 9:00 p.m.,
19 where he was observed by Special Agent Moss, (id. at 4), since
20 Mohsen resides in Los Gatos and not San Francisco. (Moss. Decl.
21 ¶ 8).

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24 ¹ The fact that the car was impounded pursuant to the
25 unlawful arrest does not effect the legitimacy of the search.
26 The Weber affidavit for the search of the car contained more than
27 enough information to find probable cause to search the vehicle
28 even absent the information received from the arrest.
Furthermore, the Weber affidavit does not rely on the result of
the inventory search to establish probable cause. The fact that
the car was in the possession of the police, pursuant to an
unlawful arrest, at the time the warrant issued, rather than on
the street or elsewhere, is not Constitutionally significant.

1 B. Agents' Good Faith in Executing the Warrant

2 To the extent that the Weber affidavit is not explicit
3 in its statement that the vehicle was an instrumentality of the
4 crime or why evidence of the crime would likely be found in the
5 vehicle, the Leon good faith exception applies. See United
6 States v. Leon, 468 U.S. 897 (1984). Where a facially valid
7 search warrant issues, and the officer's conduct in relying on
8 that search warrant is objectively reasonable, excluding the
9 evidence will not further the ends of the exclusionary rule in
10 any appreciable way, even if the warrant is subsequently
11 invalidated. Id. at 918-920. Here there is no evidence that
12 Weber's affidavit misled the magistrate, that the magistrate
13 abandoned his obligation to be neutral and detached, or that the
14 warrant was so lacking in indicia of probable cause as to render
15 official belief in its existence unreasonable. See id. at 923
16 (situations in which good faith exception would not apply). To
17 the contrary, in this case the agents had made even more
18 observations linking the vehicle to the crime than were set forth
19 in the warrant. Joel Moss, an FBI Special Agent, states: "I
20 personally saw Mohsen drive up to the Egyptian Consulate in San
21 Francisco, California. I watched Mohsen park his car on the
22 street near the Egyptian consulate." (Moss Decl. ¶ 9) (emphasis
23 added). This is indeed a strong case for Leon to apply: not only
24 did the agents have a facially valid warrant at the time of the
25 search of the vehicle, at least one officer had observed
26 additional inculpatory details that were not reflected in the
27 Weber affidavit.

28 Further, to the extent that the warrant authorized a

1 search for evidence that defendant was planning to leave the
2 jurisdiction, which would not be contempt of court, rather than
3 evidence that he had applied for a passport, which would be
4 contempt of court, the Leon good faith exception applies. The
5 agents acted in the good faith belief, pursuant to a facially
6 valid warrant, that planning to leave the jurisdiction with
7 intent to leave the jurisdiction was criminal contempt of court.
8 There is no evidence of any objective bad faith on the part of
9 the officers who conducted the search. (See Walker Decl.
10 (outlining screening procedures used by the government)). As can
11 be seen in the order addressing the validity of the arrest, the
12 law regarding contempt of court and attempted contempt of court
13 is complex, and in some ways cuts against common sense. See
14 Briggs v. Malley, 748 F.2d 715, 719 (1st Cir. 1984) (in the
15 context of considering whether police officers may be held
16 personally liable for seeking search or arrest warrants, noting
17 that "police officers cannot be held to the standards of lawyers
18 or judges"). Suppression of the search of the car in this case
19 would not serve the deterrence goal of the Fourth Amendment.

20 C. Defendant's Additional Arguments

21 Defendant offers two additional arguments for why the
22 fruits of the search of the car should be suppressed: (1) that
23 the procedure did not adequately protect lawyer-client privilege;
24 and (2) that the warrant was overbroad, especially as relates to
25 the computer found in Mohsen's car. The first argument is
26 addressed in the court's memorandum and order regarding search of
27 defendant's jail cell. Once again, Mohsen has not shown any
28 actual prejudice from the seizure of any allegedly privileged

1 document.² See United States v. Irwin, 612 F.2d 1182, 1187-90
2 (9th Cir. 1980) (holding that burden was on defendant to show
3 that he was substantially prejudiced by government's invasion of
4 attorney-client privilege). Should defendant present evidence of
5 actual prejudice, nothing in this memorandum should be construed
6 as foreclosing the appropriate remedy.

7 Defendant's second argument, that the warrant was
8 overbroad, is foreclosed by United States v. Meek, 366 F.3d 705
9 (9th Cir. 2004). In that case, a warrant issued to search the
10 defendant's home for:

11 numerous items related to the seduction and exploitation of
12 children: sexually explicit material or paraphernalia used
13 to lower the inhibition of children, sex toys, photography
14 equipment, child pornography, as well as material related to
15 past molestation such as photographs, address ledgers
16 including names of other pedophiles, and journals recording
17 sexual encounters with children. Because the suspected
18 commission of this crime involved the use of the Internet,
19 the warrant also included computer equipment, information on
20 digital and magnetic storage devices, computer printouts,
21 computer software and manuals, and documentation regarding
22 computer use.

23 Id. at 714-15. That warrant effectively enabled law enforcement
24 to search through all files created with a word processor
25 ("journals recording sexual encounters"), a photography or image
26 program ("child pornography"), all spreadsheets ("address ledgers
27 including names of other pedophiles"), and all electronic mail

28 ² Furthermore, Craig Walker, an FBI Special Agent,
declares that he screened all documents seized from the car
before they were handed over to the prosecution team. "During my
review of the materials, I identified a number of attorney-client
materials. I placed those materials in a sealed envelope. I
returned the remaining documents to Special Agent Chris Forvour
[the lead agent on the prosecution team]." (Walker Decl. ¶ 3).
"Since my review of the materials seized from Mohsen's car, the
only involvement I have had in the criminal case against Mohsen
has been working on this declaration and writing an FD-302 report
of my review of the seized documents." (Id. ¶ 4).

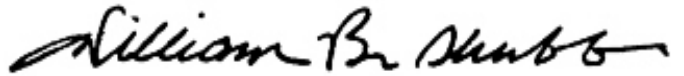
1 ("material related to past molestation"). Meek does not indicate
2 that the warrant required the searching agents to use search
3 terms or other ways to limit the documents that were searched.
4 Yet the Meek court found that "the warrant is sufficiently
5 specific." Id. at 715. "[T]he warrant here did not authorize
6 the seizure of virtually every document and computer file without
7 indicating how items were related to the suspected crime." Id.
8 (quotation marks and citation omitted). "The proper metric of
9 sufficient specificity is whether it was reasonable to provide a
10 more specific description of the items at that juncture of the
11 investigation." Id. at 716; compare United States v. Riccardi,
12 405 F.3d 852, 862-64 (10th Cir. 2005) (warrant to seize and
13 examine defendant's computer overbroad where not limited to any
14 particular files or any particular crime; nevertheless, Leon good
15 faith exception applied because officers did not conduct a
16 "fishing" expedition in their execution of the warrant).

17 In this case, the warrant was sufficiently specific.
18 The warrant authorized a search for evidence of travel plans,
19 evidence of monetary transactions, and evidence of passport
20 applications. Mohsen was suspected of planning to leave the
21 country and was suspected of having applied for a passport to
22 enable him to do so. In those circumstances, the search warrant
23 was reasonably circumscribed to evidence regarding that
24 allegation.³

25
26 ³ Defendant has submitted a "Response to Additional
27 Discovery Concerning Search of His Laptop Computer" in which he
28 alleges that "a very large number of these documents [files found
on defendant's computer, a compact disc of which was produced to
defendant by the government] are outside the scope of the

1 IT IS THEREFORE ORDERED that defendant's motion to
2 suppress the evidence seized as a result of the search of the
3 Mercedes with California license plate "APTIX" be, and the same
4 hereby is, DENIED.

5 DATED: October 24, 2005

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8 WILLIAM B. SHUBB
9 UNITED STATES DISTRICT JUDGE
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26 warrant." The only example defendant gives is correspondence
27 from defendant to the Egyptian embassy. The court finds that
28 this example fits into the third category of documents to be
searched, relating to his acquisition of a passport. If that is
what defendant points to as one of the more egregious alleged
violations by the searching officers, the court finds that the
officers' search was well within the parameters of the warrant.